

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

KIRK DAHL, et al.,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

BAIN CAPITAL PARTNERS, LLC, et al.,

Defendants.

No. 1:07-cv-12388-EFH

ORAL ARGUMENT REQUESTED

BAIN CAPITAL’S MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56, defendant Bain Capital Partners, LLC hereby moves for summary judgment in its favor on plaintiffs’ claim against it—Count One of Plaintiffs’ Fifth Amended Complaint—on the ground that the undisputed material facts show that Bain Capital is entitled to judgment thereon as a matter of law.

The grounds for this Motion are set forth in the accompanying memorandum of law. This Motion is also supported by (i) Bain Capital’s Local Rule 56.1 Statement of Material Facts As To Which There Is No Genuine Issue To Be Tried, (ii) the Declaration of Michael T. Marcucci In Support Of Bain Capital’s Motion For Summary Judgment (together with the exhibits thereto), and (iii) the Declaration of Professor Paul A. Gompers (together with the exhibit thereto). The memorandum of law, Rule 56.1 statement, portions of the Marcucci declaration, and the Gompers declaration are being filed with the Court under seal pursuant to this Court’s July 2, 2012 Order.

WHEREFORE, for all of the above-stated reasons, Bain Capital respectfully requests that this motion be **ALLOWED**, and that the Court enter judgment for Bain Capital dismissing

Count One of Plaintiffs' Fifth Amended Complaint with prejudice and such other and further relief as this Court deems just and appropriate.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), Bain Capital respectfully requests oral argument to assist the Court with addressing the issues presented in this motion.

Dated: July 23, 2012

Respectfully submitted,

/s/ Michael T. Marcucci

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LOCAL RULE 7.1 CERTIFICATION

I, Michael T. Marcucci, hereby certify that Bain Capital's counsel has conferred with plaintiffs' counsel and have attempted in good faith to resolve or narrow the issues involved in this Motion.

/s/ Michael T. Marcucci

Michael T. Marcucci

CERTIFICATE OF SERVICE

I, Michael T. Marcucci, hereby certify that a true copy of the foregoing document filed through the ECF system will be electronically sent to the registered participants as identified on the Notice of Electronic Filing on this day, July 23, 2012, and further served this day, by electronic mail and posting to an FTP site, upon Plaintiffs' and Defendants' counsel, per their agreement.

/s/ Michael T. Marcucci

Michael T. Marcucci

Dated: July 23, 2012